

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:06 CR 403
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
LOUIS C. JEMISON III,)	
)	
Defendant.)	<u>MEMORANDUM OPINION</u> <u>AND ORDER</u>

This matter is before the Court on Defendant, Louis C. Jemison III's Motion to Vacate/Void Judgment pursuant to Fed. R. Civ. P. 60(b)(4). (Docket #82.) Previously, Mr. Jemison was indicted of possession with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B); possession with intent to distribute cocaine base (crack) in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B); and, being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). On February 13, 2007, a jury returned verdicts of guilty on all counts.

On April 24, 2007, Mr. Jemison was sentenced to 240 months imprisonment on Counts I and II, and 120 months on Count III, to run concurrently, followed by eight years of supervised release. He was also ordered to pay a \$300 special assessment. On May 4, 2007, Jemison filed his notice of appeal and his appeal is currently pending in the Sixth Circuit Court of Appeals.

On August 26, 2008, Mr. Jemison filed his Motion to Vacate/Void Judgment, pro se, under Fed R. Civ. P. 60(b)(4). Mr. Jemison asserts that the Court lacked personal jurisdiction over him. On August 29, 2008, the United States filed its Response to Mr. Jemison's Motion. (Docket #83.) First, the United States asserts that because Mr. Jemison's appeal is currently pending in the Sixth Circuit, this Court has no jurisdiction to proceed in this matter. Second, the United States states that Fed. R. Civ. P. 60(b)(4) does not apply in criminal proceedings and is therefore inapplicable.

Conclusion

The pendency of Mr. Jemison's appeal divests this Court of jurisdiction over this action. Accordingly, Petitioner's Motion to Vacate/Void Judgment Under Fed. R. Civ. P. 60(b)(4) (Document #82) is hereby DISMISSED. Further, the Court notes that Fed. R. Civ. P. 60(b)(4) applies in civil proceedings and, as this is a criminal proceeding, Rule 60(b)(4) has no application to Mr. Jemison's case.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: September 15, 2008